(1)

Supreme Court, U.S.
FILED

01 574 SEP 10 2001

NO. _____

IN THE

Supreme Court of the United States

EUGENE PETER SHOLDRA, M.D.,
Petitioner,

v.

CHILMARK FINANCIAL, L.L.P.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

EUGENE PETER SHOLDRA, M.D.
Pro Se
3755 Tamarack Court
Fort Worth, Texas 76116
(817) 731-6919 (home)
(817) 596-5020 (office)

65 pp

QUESTION PRESENTED

Whether there was a denial of a Constitutional Right to a fair procedural hearing because of:

1) Judicial Oversight by the District Court in its Final Judgment, Dec. 21, 1999.

2) Judicial Assumptions by the Appellate Court in its decision on April 23, 2001.

3) Abuse of the Judicial Process by Mr. Andrew Emerson, attorney for Chilmark Financial.

4) Professional Misconduct by my attorney, Mr. Clifford McMaster.

PARTIES TO THE PROCEEDINGS

Petitioner:

Eugene Peter Sholdra, M.D.
3755 Tamarack Court
Fort Worth, Texas 76116
(817) 731-6919 (home)
(817) 596-5020 (office)
Pro Se

Respondent:

Mr. Andrew Emerson
1412 Main Street,
22nd Floor
Dallas, Texas 75202
Counsel for Respondent
(214) 744-3364

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

COURT OPINIONS iii

Bankruptcy Court Opinion . .. . . 16 -17
Bankruptcy Denial of New Trial . . . . . 18 - 19
Final Judgment of District Court. . . . . 20 - 31
District Court Denial of Rehearing . . . . . 32 - 33
Appellate Court Judgment . . . . . .16 - 39
Appellate Court Denial of Rehearing . . . . . 40 - 41
Professional Misconduct Texas Bar. . . . . .42 - 45

SUMMARY OF CASE . . . . . 1 - 21
Argument for Denial of Right to a Fair Procedural Hearing. . . . . 3 - 13
1. Judicial Oversight by District Court. . . . . 3 - 5
2. Judicial Assumptions by Appellate Court. . . 6 - 8
3. Abuse of Judicial Process by Mr. Andrew Emerson. . . . . 9 - 11
4. Professional Misconduct by Mr. Clifford McMaster. . . . . 12 - 13

CONCLUSION. 14

TABLE OF CONTENTS (Cont'd)

EXHIBITS

1. Amended Statement of Financial Affairs (front page) . . . . . pg. 46 - 47

2. Oral Deposition (Pages 1 and 23) . . . . . pg. 48 - 49

3. Final judgment of District Court (Pages 1, 5 and 7) . . . . . pg. 50 - 53

4. State of Texas Bar Rules . . . . . pg. 54 - 56

5. Rule 3.03 Candor Toward The Tribunal . pg. 54 - 56

6. Document of Professional Misconduct from the State Bar of Texas. . . . . pg . 57 - 60

SUMMARY OF CASE

In 1984 I, E.P. Sholdra, M.D., was persuaded to guarantee a real estate investment by a joint venture which included three other partners. The three partners declared bankruptcy in the late '80s. I was advised not to declare bankruptcy, but in 1998, Chilmark, a judgment creditor by virtue of purchasing the relevant notes and guarantees from the F.D.I.C., forced me into bankruptcy.

On August 3, 1998, I filed a voluntary Chapter 7. I filled out a Statement of Financial Affairs in which I believed all the answers were true. There was no intent to conceal any assets by knowingly making false statements.

Mr. Andrew Emerson, attorney for Chilmark Financial, discovered a few minor mistakes on my financial statement and pointed them out during my deposition on November 19, 1998. He never accused me of "fraudulent intent," nor did he ever obtain any acknowledgment that I knew that some statements were erroneous when I made them. Amended Schedules were filed on December 23, 1998, (See Amended Statement of Financial Affairs, Exhibit Page 46.) in a timely manner as the law allows. Mr. Emerson objected to my discharge and on April 30, 1999, filed a Motion for Summary Judgment under #727 (a)(4)(A) denying discharge. My attorney, Mr. McMaster, failed to object to the Summary Judgment motion. He believed that a hearing should have

been required on the Summary Judgment motion. No hearing was held, and on July 28, 1999, the bankruptcy court granted the Summary Judgment by default. The appeal to the bankruptcy court for retrial was denied, as was the appeal to the district and appellate courts. In their denials, the courts repeatedly refer to my admission to "knowingly making false statements under oath" as a main reason for denying my discharge. No such admission was ever made by me or my attorney. The court's belief that I knowingly made false statements under oath were based on my attorney's failure to object to the Summary Judgment. The opposing attorney, Mr.Emerson, never proved or even attempted to prove that my statements were made with "fraudulent intent." In fact, he refers to them simply as "errors" (See Page 23, Oral Deposition, Exhibit Page 49). Webster defines errors as "an act involving an unintentional deviation from the truth or accuracy."

The district and appellate courts assumed that I knew the statements on my original schedule were false. If this were true, then I would have amended them before my deposition, not after, since they had no material bearing on my case.

ARGUMENTS FOR DENIAL OF RIGHT TO A FAIR PROCEDURAL HEARING

1) Judicial Oversight by the District Court
Findings of Fact

In his statement of facts pertinent to the Summary Judgment, the district court states that I admitted to knowingly making false and incorrect statements on my Schedule of Financial Affairs (See Page 5, Final Judgment, Exhibit Page 51).

I never admitted to such a thing, and on Page 7, Judge McBryde states that I denied knowingly making false statements with fraudulent intent (See Page 7, Final Judgment, Exhibit Page 53). The Court is contradicting itself by making these statements.

In his discussion of "Laws Applied to Facts," Judge McBryde states the appellee has the burden of proving the debtor knew the statements made were false and made with fraudulent intent. Mr. Emerson never proved to the court that the statements were made knowingly and with fraudulent intent. He simply accused me of doing so. Indeed, in my oral deposition, he refers to the statements as being made "in error," not with any fraudulent intent (See Page 23, Oral Deposition, Exhibit Page 49). The mistakes were made unintentionally and honestly. Judge McBryde states that I did not file amended schedules (See Page 7, Final Judgment, Exhibit Page 53). This is an assumption on his part, and the facts show that amended schedules were filed and that these were filed promptly and within the proper time allowed by law (See Amended Files, December 23, 1998, Exhibit Page 46).

Thus Judge McBryde's conclusion of "reckless indifference to the truth and therefore the requisite intent to deceive" was not true and his decision was based on assumptions and not fact.

The district court may not have been aware of the amended files. However, in its decision, it should not have assumed that they did not exist. Judge McBryde further states that I failed to supply evidence that my statements were not made knowingly and with fraudulent intent. The fact that I denied knowing that the statements were false and that I did not realize that I had made incorrect statements until they were pointed out by Mr. Emerson, and the fact that I acknowledged these errors and amended them within days should be enough evidence to any court that I had no intention to deceive. Although Mr. Emerson based his argument on U.S.C. #727 (a) (4) (A), he never attempted to prove to the court that I knew the statements were false and made with fraudulent intent or that they were materially relevant to my case.

I submit that the district court acted improperly in assuming that, by not objecting to the Summary Judgment motion, I agreed with Mr. Emerson's accusations and that the court was wrong in stating that the Amended Files did not exist. Judge McBryde states that my answers contain "falsehoods," which implies knowledge that I was concealing the truth (See Page 7, Final Judgment, Exhibit Page 53). The only proof of this was Mr. Emerson's accusations. Judge McBryde's exact words were that I "failed to take advantage of

the opportunity to file amended schedules" (See Page 7, Final Judgment, Exhibit Page 53). This was not true (See Amended Files, Exhibit Page 46). The court should not have based its decision on false assumptions. I believe that the Judicial Oversight and False Assumptions by the district court contributed to my denial of a fair hearing.

2) JUDICIAL ASSUMPTIONS BY THE APPELLATE COURT

In the decision made by the Appellate Court, they state that I admitted to "making material false statements under oath." I object to their statement. I admitted to making unintentional mistakes, not false statements. The statements which were made were believed to be true and were only recognized as errors when pointed out during my deposition. Even the opposing counsel referred to the statements as being made in error (See Page 23 of Oral Deposition, Exhibit Page 49).

The Appellate Court states that the objecting party has the burden of proving that:

(1) the Debtor made a false statement under oath;

(2) the statement was false;

(3) the Debtor knew the statement was false;

(4) the Debtor made the statement with fraudulent intent;

(5) the statement was material to the bankruptcy case:

(1) Mr. Emerson never proved that I made a "false statement under oath." When I made the statements I believed them to be true and I signed the document believing that the statements were true.

(2) Mr. Emerson refers to the statements as being made in "error" (See Page 23, Oral Deposition, Exhibit Page 49). Thus by definition he has acknowledged that the statements

were made unintentionally.

(3) Mr. Emerson never proved that I knew the statements were false, and I never admitted to him or to the court that I knew the statements were false. I did not even believe they were wrong or I would have amended them immediately.

(4) Mr. Emerson never proved or even attempted to prove that the statements made on my original schedule were made with "fraudulent intent." He accuses me of "fraudulent intent," yet he refers to the statements as being made unintentionally, i.e., in "error." The court had no evidence of "fraudulent intent," but assumed this conclusion by my attorney's failure to object to the Summary Judgment.

(5) Mr. Emerson would have insulted the court by putting a material value on the mistakes made on my original schedule.

If I could indulge the Court:

1) I failed to list a six-year-old Volvo worth approximately $5,000.00;

2) I failed to list a weekly donation to my church of $100.00;

3) I failed to list a credit card payment of $600.00, which was paid by my wife.

4) I failed to list two educational trust accounts for my children, which had no monetary value;

5) The other errors concerning the value of my corporation and loan from my corporation were issues that needed to be explained by my accountant at my hearing in Court. These errors were acknowledged and corrected in the

Amended Statement of Financial Affairs of December 23, 1998. Mr. Emerson never proved to the court that I was guilty of "fraudulent intent," but since my attorney failed to respond to the Summary Judgment motion, the court assumed that I agreed with his accusations.

The Appellate Court has concluded that I knowingly made false statements on my original schedules. There was never any proof presented to the court that I knew the statements were false. Therefore, their conclusion as was the conclusion of the district court is based on assumption rather than fact.

The fact that I did not try to hide information from the opposing counsel and amended my statements immediately should be evidence enough to show that my mistakes were made honestly and with no intention to deceive the court.

I therefore feel that the Appellate Court was wrong in their decision and thus contributed to my denial of a fair hearing.

3) ABUSE OF JUDICIAL PROCESS

Statements of Fact:

On September 16, 1998, I filled out a financial statement in my attorney's office. I did this without the help of my accountant or any income tax returns. The errors which were made on the schedule were made unintentionally and with no intent to deceive. The "errors" were noted by Mr. Emerson by simply reviewing my income tax files. These "errors" were acknowledged and corrected within days. Mr. Emerson was served notice of these corrections on December 29, 1998.

Yet, on April 30, 1999, Mr. Emerson made a motion for Summary Judgment under U.S.C. #727(a)(4)(A). In his Summary Judgment motion he refers to statements made on the original schedule as if they were the only files. He totally ignores the Amended Files in his briefs to the bankruptcy and district courts. He did such a good job that the district court did not know that the Amended Files existed and stated that fact in its decision (See Page 7, Final Judgment, Exhibit Page 53).

Errors were made by me on the original Statement of Financial Affairs. However, these were honest mistakes and were corrected in the Amended Files. Therefore, any reference to the original files by Mr. Emerson should also have included a reference to the Amended Files. By using my original statements without acknowledging my corrections, I feel that Mr. Emerson is in violation of Rule 3.03 of the Texas Rules of Professional Conduct (See State Bar Rules, Exhibit Pages 54 - 56).

I do not object to Mr. Emerson referring to the original files, but I do object to him deceiving the courts by creating the impression that I did not amend the original files as the law allows. He also accused me of knowingly making false statements, yet nowhere during my deposition did I ever admit to knowingly making false statements. By his own admission, he refers to the incorrect statements as "errors," which by definition are "unintentional deviations from the truth."

Mr. Emerson states that he at no time ever represented to any tribunal that Amended Schedules had not been filed. This may be true, but by using the original files as evidence without making reference to the Amended Files, he has created the false impression to both the Bankruptcy and District Courts that there were no Amended Files. As an officer of the court, he has an obligation to inform the judge of the facts which may influence his decision (See Texas Bar Rules, Rule 3.03, Candor Toward the Tribunal, Paragraphs 1, 2, 7 and 8, Exhibit Page 55). By not mentioning the Amended Files to either court, I feel that he has indeed made a "false statement of material fact to a tribunal" (See Texas Bar Rules, Rule 3.03, Exhibit Page 56). By accusing me of knowingly making false statements on my original schedule without proving it, Emerson is using "evidence that he knows to be false" (See Texas Bar Rules, Rule 3.03, Candor Toward the Tribunal, Exhibit Pages 54 - 56).

On December 4, 2000, during our hearing in the Appellate Court:

1. Judge Smith stated that Mr. Emerson filed an "Erroneous Summary Judgment Request";

2. Judge Parker stated that Mr. Emerson deceived the bankruptcy and the district courts by taking the position that the Amended Schedules did not exist;

3. Judge Politz stated that Mr. Emerson had no right to use the original schedules when he was aware that the Amended Files existed and that he, Judge Politz, had serious concerns that Mr. Emerson was "not functioning properly." Mr. Emerson acknowledged to the court that he was aware of the Amended Schedules, but he chose to use the original schedules in both the bankruptcy and district court.

4. Judge Politz said that Mr. Emerson had no right to make that decision. If he wished to use the original files instead of the Amended Files, he would have to get the court's approval. Judge Politz stated that Mr. Emerson deliberately concealed facts from the bankruptcy and district courts.

5. Judge Parker also accused Mr. Emerson of deceiving the bankruptcy and district courts by pretending that the Amended Files did not exist when he presented his briefs to the above courts.

I feel that Mr. Emerson is guilty of knowingly concealing evidence from the courts and thus by his Abuse of the Judicial Process has contributed to my denial of a fair hearing.

4) PROFESSIONAL MISCONDUCT BY MY ATTORNEY, MR. McMASTER

On August 4, 1998, I retained Mr. Clifford McMaster, Bankruptcy Attorney for 40 years, to represent me in my Chapter 7 Bankruptcy. I filled out a Statement of Financial Affairs in his office with the help of his legal assistant. I believed that all my statements were true and, after his approval, I signed the document. The schedule, however, contained some errors which were missed by Mr.McMaster and picked up by the opposing attorney, Mr. Emerson. These errors were corrected and Amended Schedules were filed in a timely manner on December 23, 1998. However, Mr. Emerson objected to my discharge, and a hearing date was set on July 20, 1999. Mr. Emerson filed a motion for Summary Judgment and Mr. McMaster failed to object to the motion and thus the motion was granted by default. I became aware that Mr. McMaster had done something wrong when, at my hearing for retrial, the bankruptcy judge asked Mr. McMaster why he had not objected to the Summary Judgment Motion. Mr. McMaster said that he believed that a Summary Judgment could not be granted without a court hearing. I found out that my attorney was wrong and that a judge can make a decision without a hearing, and since Mr. McMaster did not object to the Summary Judgment, it was granted by default.

The bankruptcy, district and appellate courts all based their decision to deny my bankruptcy discharge to a great

extent on the fact that my original attorney, Mr. McMaster, had failed to object to the Summary Judgment motion. My day in bankruptcy court was canceled by the granting of the Summary Judgment.

I complained to the State Bar of Texas about Mr. McMaster's negligence in not responding to the Summary Judgment motion and they agreed that he did not represent me properly and reprimanded him (See State Bar of Texas, Disciplinary Counsel, Exhibit Pages 57 - 60). By not having my day in court, I was unable to object to the accusations made by Mr. Emerson, nor was I able to object to the use of the original files used as evidence by Mr. Emerson, instead of the Amended Files, which he knew existed. The Bankruptcy Court and the District Courts were unaware of the Amended Files (See Page 7, Final Judgment, Exhibit Page 53). Their decisions were based on the false accusation by Mr. Emerson and the assumption that Amended Files did not exist. I feel that due to the misconduct of my original attorney, I was denied my right to a fair hearing.

CONCLUSION

In conclusion, I am appealing to the Supreme Court to grant me a Fair Procedural Hearing, which has been denied me by:

1) Legal Misconduct by my bankruptcy attorney,
2) Abuse of the Judicial Process by the opposing attorney, and;
3) Judicial Oversight and False Assumptions by the District and Appellate Courts.

Sincerely,

E. P. Sholdra M.D

Eugene P. Sholdra, M.D.

[This page intentionally left blank.]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
UNITED STATED COURTHOUSE
501 WEST 10th STREET
FORT WORTH, TEXAS 76102
CHAMBERS OF
MASSIE TILLMAN, JUDGE

ORIGINAL

U.S. BANKRUPTCY COURT
DISTRICT OF TEXAS
ENTERED JUL 15 1999
TAWANA C. MARSHALL, CLERK
By /s/
Deputy

July 15, 1999

Mr. Andrew Emerson
714 Jackson St., Ste. 500
Dallas, Texas 75202

Re: *In re Eugene Peter Sholdra*; Case No. 498-44732-MT-7
Chilmark Financial Company, L.L.C. v. Eugene Peter Sholdra
Adversary No. 498-4239
Plaintiff's Motion for Summary Judgment

Dear Mr. Emerson:

After considering the pleadings and the evidence, the Court finds and concludes that the Plaintiff's Motion for Summary Judgment should be, and is, granted.

The Court believes that no material issues of genuine fact exist within this adversary and thus, Summary Judgment is proper under the standard established in Federal Rule of Civil Procedure 56.

Please prepare an order consistent with this letter ruling. If Mr. McMaster wishes to appeal, please submit Finding of Facts and Conclusions of Law to my law clerk, Julie McGrath, along with a copy on disk.

Sincerely,

/s/

Massie Tillman
United States Bankruptcy Judge

cc: Mr. Clifford McMaster

United States Bankruptcy Court
Northern District of Texas
United States Courthouse
501 W. 10th Street
Fort Worth, Texas 76102

CHAMBERS OF
MASSIE TILLMAN
JUDGE

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
SEP 23 1999
TAWANA C. MARSHALL, CLERK
By /s/
Deputy

September 22, 1999

Mr. Andrew Emerson
714 Jackson St., Ste. 500
Dallas, Texas 75202

Re: R*e Eugene Peter Sholdra*; Case No. 498-44732-MT-7
Chilmark Financial Company, L.L.C. v. Eugene Peter Sholdra
Adversary No. 498-4239
Motion for New Trial

Dear Mr. Emerson:

After considering the pleadings and the evidence, the Court finds and concludes that the Defendant's Motion for New Trial should be, and is, denied. The Court finds that the Plaintiff established its prima facie case for denial of discharge under 11 U.S.C. #727(a), but the Debtor failed to present facts sufficient to create an issue of genuine fact as the Debtor did

did not file a response to the Motion for Summary Judgment. The Court does not believe grounds exist for the granting of a new trial under Federal Rule of Bankruptcy Procedure 9024.

Please prepare an order consistent with this letter ruling. If Mr. McMaster wishes to appeal, please submit Finding of Facts and Conclusions of Law to my law clerk, Julie McGrath, along with a copy on disk.

Sincerely,

/s/

Massie Tillman
United States Bankruptcy Judge

cc: Mr. Clifford McMaster

U.S. District Court
Northern District of Texas
FILED
DEC 21 1999
Nancy Doherty, Clerk
By /s/
Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	
EUGENE PETER SHOLDRA,	)	
Debtor.	)	
	)	
EUGENE PETER SHOLDRA,	)	
Appellant,	)	
	)	
VS.	)	NO. 4:99-CV-912-A
	)	
CHILMARK FINANCIAL CO., L.L.C.,	)	
	)	
Appellee.	)	

FINAL JUDGMENT

In accordance with the court's memorandum opinion and

order of even date herewith,

The court ORDERS, ADJUDGES, and DECREES that the July 28, 1999, judgment and the September 30, 1999, order of the United States Bankruptcy Court the subject of this appeal be, and are hereby, affirmed.

SIGNED December 21, 1999.

/s/
JUDGE McBRYDE
United States District Judge

ENTERED ON DOCKET
12-22-99
U.S. DISTRICT CLERK'S OFFICE

U.S. District Court
Northern District of Texas
FILED
DEC 21 1999
NANCY DOHERTY, CLERK
By /s/
Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	
	)	
EUGENE PETER SHOLDRA,	)	
Debtor.	)	
	)	
	)	
EUGENE PETER SHOLDRA,	)	
	)	
Appellant,	)	
	)	
VS.	)	NO. 4:99-CV-912-A
	)	
CHILMARK FINANCIAL CO., L.L.C.,	)	
Appellee.	)	

MEMORANDUM OPINION
and
ORDER

This action comes before the court as an appeal from an

order of the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, the Honorable Massie Tillman presiding. The court, having reviewed the briefs of appellant, Eugene Peter Sholdra, and appellee, Chilmark Financial Company, L.L.C., the record on appeal, and applicable authorities, makes the following determination.

I.

Jurisdiction

This is an appeal from an order and final judgment rendered in adversary proceeding No. 498-4239 under case number 98-44732-MT-7 .

Entered on Docket
12-22-99
U.S. District Clerk's Office

This court's jurisdiction exists pursuant to 28 U.S.C. #158(a).

II.

Underlying Proceedings

On August 4, 1998, Eugene Peter Sholdra ("debtor") filed a voluntary Chapter 7 petition. Because his schedules and Statement of Financial Affairs were incomplete, appellee files

a motion to compel their completion. Appellee then filed an objection to claimed exemptions and later a complaint objecting to debtor's discharge. On April 30, 1999, appellee filed, in the adversary proceeding, a motion for Summary Judgment. Debtor never filed a response. By letter ruling issued July 15, 1999, the bankruptcy court granted the motion for Summary Judgment. On July 28, 1999, the final judgment was entered. Defendant then filed a motion for new trial, which was denied. From that order, debtor appeals.

1An order denying a new trial may not be appealed, since the appeal should be taken from the judgment itself. Hogue v. Royse City, Texas, 939 F.2d 1249, 1251 (5th Cir. 1991). Nevertheless, if, from the proceedings on appeal and from the notice of appeal itself, it is apparent that the appeal was intended to have been taken from the underlying judgment, the notice may be construed as bringing up that judgment for review. Id. (citing Foman v. Davis, 371 U.S. 178, 181 (1962). Appellee's brief reflects the understanding that the appeal is from the final judgment granting the motion for Summary Judgment. Accordingly, the court will proceed on that basis.

III.

Issues on Appeal

In his designation of items to be included in the record of appeal and issues to be presented, debtor identifies the following issues: (1) whether the granting of a Summary Judgment was proper; (2) whether the Summary Judgment evidence showed as a matter of law that debtor knew certain items in the schedules were false; and (3) whether the Summary Judgment evidence shows as a matter of law that the false statements made in the schedules were made with a fraudulent intent. While debtor's brief does not provide a statement of the issues presented, or follow the form dictated by Bankruptcy Rule 8010 in other respects, the court is, nevertheless, considering these issues.

IV.

Standard of Review

As this is an appeal from a Summary Judgment, the bankruptcy court's decision is reviewed de novo. Romley v. Sun Nat'l Bank (In re Two "S" Corporation), 875 F.2d 240, 242 (9th Cir. 1989); Degan v. Ford Motor Co., 869 F.2d 889, 892 (5th Cir. 1989). Summary judgment is appropriate if, in viewing the evidence in the light most favorable to the

nonmovant, the court determines that there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The moving party has the initial burden of showing that there is no genuine issue of material fact. Id. at 256. Once the moving party has carried its burden under Fed. R. Civ. P. 56(c), the nonmoving party must do more than merely show that there is some metaphysical doubt as to the material facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The party opposing the motion may not rest on mere allegations or denials of pleading, but must set forth specific facts showing a genuine issue for trial. Anderson, 477 U.S. at 248, 256. an issue is material only if its resolution could affect the outcome of the action. Id. at 248. Unsupported allegations, conclusory in nature, are insufficient to defeat a proper motion for Summary Judgment. Simmons v. Lyons, 746 F.2d 265, 269 (5th Cir. 1984).

V.

Facts Pertinent to the Summary Judgment

Appellee is the owner of a judgment against debtor and another in case number 3:94-CV-2094-AJ in the United States District Court for the Northern District of Texas, Dallas Division. The judgment, rendered September 25, 1995, for amounts in excess of $1,470,000.00, remains wholly unsatisfied.

When debtor filed his voluntary petition on August 4, 1998, he failed to attach any of the required schedules. On September 16, 1998, debtor filed, under oath, his Statement of Financial Affairs and bankruptcy schedules, including a list of assets. By his verification, debtor confirmed that the list contained a true and complete list of all assets. Debtor admits that he made false and incorrect statements and that they were made under oath. Specifically, he admits that he did not disclose income he received as a shareholder of his professional association for the years 1996, 1997, and 1998; he did not disclose distributions to him from his professional association; he failed to disclose income he received as a shareholder of his professional association; he did not list his professional association as a creditor although it was; he did not disclose gifts to his church in the approximate amount of $5,000.00 in the year preceding his bankruptcy filing; he did not list ownership of an automobile even though he showed

payments for the same in his budget; he failed to reveal that he was the trustee of two trusts for his children; and, he did not disclose payments made on a credit card.

On April 30, 1999, Appellee filed its motion for Summary Judgment seeking judgment that debtor be denied a discharge because of his having knowingly made a false oath or account in violation of #727(a)(4)(A) of the United States Bankruptcy Code. Debtor failed to respond to the motion and has never presented any competent Summary Judgment evidence in opposition to the motion.

VI.

Law Applied to the Facts

The Bankruptcy Code provides that a debtor will not be granted a discharge if he "knowingly and fraudulently, in or in connection with the case . . . made a false oath or account . . . " 11 U.S.C. #727(a)(4)(A). Appellee had the burden of proving that debtor made a statement under oath; that the statement was false; that debtor knew the statement was false; that he made the statement with fraudulent intent; and that the statement related materially to the bankruptcy case. Beaubouef v. Beaubouef (In re Beaubouef), 966 F.2d 174, 178 (5th Cir. 1992). Denial of discharge is appropriate where the debtor makes a false statement of omission in his schedules or makes a false statement at his examination during the course of the bankruptcy proceedings. Id.

Although debtor concedes that he made false statements under oath, he argues that they were not material. Beaubouef defines "material" as follows:

The subject matter of a false oath is "material" and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property. . . . The recalcitrant debtor may not escape a #727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information

concerned a worthless business relationship or holding; such a defense is specious. It makes no difference that he does not intend to injure his creditors when he makes a false statement. Creditors are entitled to judge for themselves what will benefit, and what will prejudice them. The veracity of the bankrupt's statements is essential to the successful administration of the Bankruptcy Act. 966 F.2d at 178 (quoting In re Chalik, 748 F.2d 616, 617 (11th Cir. 1984). By that definition, all of the false statements made by debtor were material.

Debtor further argues that he is "a medical doctor who understands little of his financial affairs" and that he did not knowingly make false statements with fraudulent intent. Appellant's Br. at 6. The Fifth Circuit has determined, however, that the cumulative effect of a number of falsehoods, together with the failure to take advantage of the opportunity to file amended schedules, constitutes reckless indifference to the truth, and therefore, the requisite intent to deceive. Beaubouef, 966 F.2d at 178. And, intent to defraud can be decided as a matter of law. BMG Music v. Martinez, 74 F.3d 87, 89-90 (5th Cir. 1996). Here, Debtor failed to present any Summary Judgment evidence to support his contention that his false statements were not made knowingly and with fraudulent intent. As no genuine issues of material fact were raised, Summary Judgment was proper. Anderson, 477 U.S. at 248, 256.

VII

Conclusion

For the reasons discussed herein,

The court ORDERS that the order and final judgment of the bankruptcy court the subject of this appeal be, and are hereby, affirmed.

SIGNED December 21, 1999.

/s/

JUDGE McBRYDE
United States District Judge

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 25 2000
NANCY DOHERTY, CLERK
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	
	)	
EUGENE PETER SHOLDRA,	)	
	)	
Debtor.	)	
	)	
EUGENE PETER SHOLDRA,	)	
	)	
Appellant,	)	
	)	
VS.	)	NO. 4:99-CV-912-A
	)	
CHILMARK FINANCIAL CO., L.L.C.,	)	
	)	
Appellee.	)	

ORDER

Came on for consideration the motion of appellant, Eugene

Peter Sholdra, for rehearing. The court, having considered the motion, the response of appellee, Chilmark Financial Company, L.L.C., the record and applicable authorities, finds that the motion should be denied.

The court ORDERS that appellant's motion for rehearing be, and is hereby, denied.

SIGNED January 25, 2000.

/s/
JUDGE McBRYDE
United States District Judge

U.S. COURT OF APPEALS
F I L E D
APR 23 2001
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10208

In the Matter of EUGENE PETER SHOLDRA,
Debtor.

EUGENE PETER SHOLDRA,
Appellant,

v.

CHILMARK FINANCIAL, LLP,

Appellee.

Appeals from the United States District Court
for the Northern District of Texas

Before POLITZ, SMITH, and PARKER, Circuit Judges.
ROBERT M. PARKER, Circuit Judge.

Appellant-Debtor Eugene Peter Sholdra appeals the final judgment of the district court, which affirmed the bankruptcy court's entry of Summary Judgment for Appellee and denial of discharge in bankruptcy pursuant to 11 U.S.C. #727(a)(4)(A), for knowingly and fraudulently making a false oath or account in connection with his bankruptcy petition. We affirm.

I.

Appellant filed a voluntary Chapter 7 petition on August 3, 1998. On November 23, 1998, Appellee, who holds an unsatisfied judgment against Appellant for more than $1,470,000.00 from a separate action, filed an adversary proceeding in the bankruptcy court objecting to Appellant's bankruptcy discharge, alleging that discharge should be denied under #727(a)(2) for concealing assets, and/or under #727(a)(4)(A) for making a false oath or account in filing schedules and a Statement of Financial Affairs. Appellant testified in his deposition that some information in his schedules and statement was false. One week after the deposition, Appellant filed amended schedules and Statement of Financial Affairs purporting to correct such false statements. Thereafter, Appellee filed a motion for Summary Judgment on April 30, 1999, seeking summary judgment for Appellant's violation of #727(a)(4)(A), and for a judgment denying discharge. Appellant did not file a response. On July 28, 1999, the bankruptcy court granted Appellee's motion and

entered judgment denying Appellant discharge and all other relief. The record reveals no findings made by the bankruptcy court.

Appellant appealed the judgment to the district court, which affirmed the bankruptcy court's judgment on December 21, 1999. The district court specifically held that Summary Judgment was proper because Appellant admitted that he knew his schedules and Statement of Financial Affairs contained false information, and because Appellant failed to present any evidence to support his contention that his false statements were not made with fraudulent intent. Thereafter, Appellant changed counsel and moved for a rehearing before the district court, which denied the motion. Appellant timely appealed the district court's judgment to this court.

II.

We have jurisdiction over this appeal under 28 U.S.C. #158(d) and 1291. We review the grant of Summary Judgment de novo applying the same standards as the trial court. *Century Indemnity Co. v. Nat'l Gypsum Co. Settlement Trust (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 504 (5th Cir. 2000).

Section 727(a)(4)(A) provides that a court "shall grant the debtor a discharge unless. . . the debtor knowingly or fraudulently, or in connection with the case. . .made a false oath or account." The objecting party has the burden of proving that (1) the debtor made a false statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor made the statement with fraudulent

intent; and (5) the statement was material to the bankruptcy case. In re *Beaubouef*, 966 F.2d 174, 178 (5th Cir. 1992). Because it is undisputed that Appellant made materially false statements under oath, this appeal involves only whether Appellant made such statements with fraudulent intent or reckless indifference to the truth, which can be proven by circumstantial evidence. *C'f. Pavy v. Chastant (In re Chastant)*, 873 F.2d 89, 91 (5th Cir. 1989); *Beaubouef*, 966 F.2d at 178.

Appellant argues that there are genuine issues of material fact precluding Summary Judgment. In his brief, Appellant initially argues that the amended schedules and Statement of Financial Affairs create genuine issues of material fact. He also asserts that Appellee is not entitled to Summary Judgment because it did not disclose to the bankruptcy court and district court the amended schedules and Statement of Financial Affairs and because the information on which Appellee based its objection to discharge was revealed by Appellant prior to his bankruptcy petition. He finally argues that he is merely a medical doctor who is inexperienced with financial affairs and relied on incorrect information from a paralegal employed by his bankruptcy counsel, Mr. Clifford F. McMaster, and on his wife's role as business manager handling his financial affairs.

We disagree because the amended schedules and Statement of Financial Affairs fail to create a genuine issue of material fact. While it may have been better practice for Appellee to disclose the existence of such amendments, they do not negate the fact that Appellant made knowingly false oaths in his original schedules and Statement of Financial Affairs. *See*

Mazer v. United States, 298 F.2d 579, 582 (7th Cir. 1962) (rejecting debtor's argument that an amended schedule relieved a false oath). Moreover, Appellant filed the amendments only after the falsity of the original documents was revealed in his deposition. *See Swicegood v. Ginn*, 924 F.2d 230, 232 (11th Cir. 1991) (per curiam) (affirming fraudulent intent finding partially relying on debtor's amendment of schedules made after debtor's former wife revealed omitted assets to judgment creditor); *FDIC v. Sullivan (In re Sullivan)*, 204 B.R. 919, 943 (Bankr. N.D. Tex. 1997); *Banc One v. Braymer (In re Braymer)*, 126 B.R. 499, 501-02 (Bankr. N.D. Tex. 1991). We need not and do not decide whether such amendments could ever preclude Summary Judgment denying discharge because this appeal presents no genuine issue of material fact relating to Appellant's violation of #727(a)(4)(A). *Cf. Beaubouef*, 966 F.2d at 178 (suggesting that an opportunity to clear up inconsistencies and omissions with amended schedules may be considered in analyzing findings of actual intent to defraud); *Gullickson v. Brown (In re Brown)*, 103 F.3d 1290, 1294-95 (10th Cir. 1997). It is undisputed that Appellant made materially false statements in his schedules and Statement of Financial Affairs and amended them only after his deposition confirmed the falsehood. When confronted with Appellee's motion, Appellant remained silent and did not present any facts creating genuine issues of material fact. In light of these circumstances, we agree with the district court that Appellant made the false statements with fraudulent intent. *See Economy Brick Sales, Inc. v. Gonday (In re Gonday)*, 27 B.R. 428, 432 (Bankr. M.D. La. 1983) ("[T]he cumulative effect of

all the falsehoods together evidences a pattern of reckless and cavalier disregard for the truth [to support] fraudulent intent."); *Olendorf v. Buckman*, 173 B.R. 99, 105 (E.D. La. 1994). As we have noted, "[f]ull disclosure of assets and liabilities in the schedules required to be filed by one seeking relief under Chapter 7 is essential." *Beaubouef*, 966 F.2d at 179.

Finally, Appellant's inexperience with financial affairs or reliance on incorrect advice or information, even if true, cannot withstand Summary Judgment. Appellant's purported inexperience with financial affairs does not negate the fact that he made false oaths by knowingly swearing to false information. We also cannot accept Appellant's attempt to blame the false oaths on his bankruptcy counsel and his wife's conduct. Although we have serious questions about Mr. McMaster's conduct in this action, Appellant and his appellate counsel did not raise this argument before the district court, and we decline to address them on this appeal. *See Insilco Corp. v. United States (In re Insilco Corp.)*, 53 F.3d 95, 99 (5th Cir. 1995); *cf. Hibernia Nat'l Bank v. Perez*, 124 B.R. 704, 710 (Bankr. E.D. La. 1991) ("[T]he advice of counsel is not a defense when it is transparently plain that the property should be scheduled.") (internal quotation marks omitted), *aff'd*, 954 F.2d 1026 (5th Cir. 1992).

III

For the reasons stated above, the judgment of the district court is AFFIRMED.

U.S. COURT OF APPEALS
F I L E D
JUN 12 2001
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10208

In the Matter of: EUGENE PETER SHOLDRA
Debtor

- -

EUGENE PETER SHOLDRA,

Appellant,

v.

CHILMARK FINANCIAL LLP,

Appellee.

Appeal from the United States District Court for the
Northern District of Texas, Fort Worth

O R D E R:

IT IS ORDERED that the appellant's motion for leave to file a supplement to his petition for rehearing is GRANTED.

The petition for rehearing is DENIED.

/s/
ROBERT M. PARKER
UNITED STATES CIRCUIT JUDGE

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

STATE BAR OF TEXAS

Office of the Chief Disciplinary Counsel

May 22, 2001

Eugene P. Sholdra
3755 Tamarack Court
Fort Worth, TX 76116

RE: F0010110991 Eugene P. Sholdra - Clifford F. McMaster

Dear Dr. Sholdra:

Pursuant to our telephone conversation, enclosed you will find a copy of the following:

1) Findings of Fact and Conclusions of Law; and
2) Agreed Judgment of Private Reprimand.

Again, a reminder that this information is confidential and it is required this confidentiality be maintained.

Sincerely,

/s/

Amy I. Messer
Assistant Chief Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

BEFORE THE GRIEVANCE COMMITTEE FOR THE
STATE BAR
DISTRICT NO.07A
THE STATE BAR OF TEXAS

Complaint Against	)	CONFIDENTIAL
	)	
Clifford F. McMaster	)	No. F0010110991
	)	
Fort Worth, Texas	)	

COPY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A complaint was docketed by the Grievance Committee for State Bar District No.07A, State Bar of Texas, against Clifford F. McMaster, Texas Bar Number 13786000, (hereinafter called "Respondent") a licensed attorney and member of the State Bar of Texas, residing or maintaining and office in Fort Worth, Tarrant County, Texas, by Eugene P. Sholdra, as Complainant, alleging certain acts of professional misconduct on the part of the Respondent which occurred in Tarrant County, Texas. A Panel of the Committee has conducted a hearing on this complaint and having considered all of the evidence submitted, and by agreement of the Respondent lawyer, has on April 11, 2001 made the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT

1) Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2) The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney fees and direct expenses associated with the proceedings of this matter, which should be paid by Respondent.

3) Respondent was retained on August 4, 1998 to represent Complainant in a person bankruptcy. Respondent filed the Chapter 7 bankruptcy petition on August 4, 1998. The original schedules filed were incorrect and were later amended. A creditor filed an adversary proceeding and filed a motion for Summary Judgment on April 30, 1999. As counsel or record, Respondent was served that motion. although the local rules for the Northern District of Texas require a response be filed to a motion for summary judgment, Respondent did not file a response. Respondent failed to carry out the obligations owed to Complainant by failing to file a response to the motion for Summary Judgment that had been filed. The motion was granted and Complainant was denied a discharge.

II.

CONCLUSIONS OF LAW

The foregoing findings of fact support a violation of Rule(s) 1.01(b) (2) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

SIGNED this 9 day of May, 2001.

GRIEVANCE COMMITTEE
DISTRICT NO. 07A
STATE BAR OF TEXAS
BY: /s/
Juan Tijerina
Chairperson

CONSENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

In connection with the charges of professional misconduct filed against me and heard by your Committee, I hereby consent to entry of Findings of Fact and Conclusions of Law in the form submitted to me.

SIGNED this 4 day of April, 2001.

/s/
Clifford F. McMaster
State Bar No. 13786000

FILED
Dec 23 1239 PM '98

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re: SHOLDRA, EUGENE PETER — 98-44732-MT-7
Debtor — Case No. (if known)

AMENDED
STATEMENT OF FINANCIAL AFFAIRS

---

1. Income from employment or operation of business.

NONE [ ] State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year.

This year:	1998	Amount:	15,800.00
Source:	Wages - MDPA		
Last Year:	1997	Amount:	16,800.00
Source:	Wages - MDPA		
Previous year:	1996	Amount:	18,200.00
Source:	Wages - MDPA		

---

2. Income other than from employment or operation of business .

NONE [ ] State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. (See attachment)

---

3. Payments to creditors.

NONE [X] a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case.

NONE [X] b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders.

---

4. Suits and administrative proceedings, executions, garnishments, and attachments.

NONE a. List all suits and administrative proceedings to which the

IN THE UNITED STATES BANKRUPTY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE)
EUGENE PETER SHOLDRA) CASE NO. 98-44732-MT-7
Debtor)

ORAL DEPOSITION
OF
EUGENE PETER SHOLDRA

Answers and deposition of EUGENE PETER SHOLDRA, produced as a witness at the instance of Chilmark Financial Company, L.L.C., taken by Notice before Cindy M. Baucom, a Certified Shorthand Reporter in and for the State of Texas, on this the 19th day of November, 1998 at 2:00 o'clock p.m., at the offices of Clifford McMaster, located at 1400 Oil & Gas Building, 309 West 7th Street, in the City of Fort Worth, County of Tarrant, State of Texas.

ORIGINAL

EXHIBIT 8

leased the Volvo for five years. And I just assumed it was automatically staying on the corporation's books.

Q. You agree that you owned the Volvo now; is that correct?

A. According to the -- according to that piece of paper, yes.

MR. McMASTER: That being the title?

THE WITNESS: That being the title. But I was under the impression that the corporation still owned it.

BY MR. HICKMAN:

Q. So do you agree that this is an error? That Volvo credit or the finance company should be listed as a secure creditor in your bankruptcy case?

MR. McMASTER: That's my call. Yes, it is.

A. Okay. Yes, sir.

(Deposition Exhibit No. 3 was marked for I identification.)

BY MR. HICKMAN:

Q. I'll show you what's been marked for identification as Deposition Exhibit 3. It purports to be a financial statement dated March 31, 1998 for Eugene P. Sholdra, M.D.P.A. Have a look at that. Do you agree that's what that is?

U.S. DISTRICT COURT
FILED
DEC 21 1999
NANCY DOHERTY, CLERK
By /s/
Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	
	)	
EUGENE PETER SHOLDRA,	)	
	)	
Debtor	)	
	)	
EUGENE PETER SHOLDRA,	)	
	)	
Appellant,	)	
	)	
VS.	)	NO. 4:99-CV-912-A
	)	
CHILMARK FINANCIAL CO., L.L.C.,	)	
	)	
Appellee.	)	

FINAL JUDGMENT

In accordance with the court's memorandum opinion and order of even date herewith,

The court ORDERS, ADJUDGES, and DECREES that the July 28, 1999, judgment and the September 30, 1999, order of the United States Bankruptcy Court the subject of this appeal be, and are hereby, affirmed.

SIGNED December 21, 1999.

/s/
JUDGE McBRYDE
United States District Judge

Debtor admits that he made false and incorrect statements and that they were made under oath. Specifically, he admits that he did not disclose income he received as a shareholder of his professional association for the years 1996, 1997 and 1998; he did not disclose distributions to him from his professional association; he failed to disclose income he received as a shareholder of his professional association; he did not list his professional association as a creditor although it was; he did not disclose gifts to his church in the approximate amount of $5,000.00 in the year preceding his bankruptcy filing; he did not list ownership of an automobile even though he showed payments for the same in his budget; he failed to reveal that he was the trustee of two trusts for his children; and, he did not disclose payments made on a credit card.

On April 30, 1999, appellee filed its motion for Summary Judgment seeking judgment that debtor be denied a discharge because of his having knowingly made a false oath or account in violation of #727(a)(4)(A) of the United States Bankruptcy Code. Debtor failed to respond to the motion and has never presented any competent Summary Judgment evidence in opposition to the motion.

Debtor further argues that he is a medical doctor who understands little of his financial affairs and that he did not knowingly make false statements with fraudulent intent. Appellant's Br. at 6. The Fifth Circuit has determined, however, that the cumulative effect of a number of falsehoods, together with the failure to take advantage of the opportunity to file amended schedules, constitutes reckless indifference to the truth, and therefore, the requisite intent to deceive. Beaubouef, 966 F.2d at 178. And, intent to defraud can be decided as a matter of law. BMG Music v. Martinez, 74 F.3d 87, 89-90 (5th Cir. 1996). Here Debtor failed to present any Summary Judgment evidence to support his contention that his false statements were not made knowingly and with fraudulent intent. As no genuine issues of material fact were raised, Summary Judgment was proper. Anderson, 477 U.S. at 248, 256.

VII.

For the reasons discussed herein,

STATE BAR RULES

RULE 3.03 CANDOR TOWARD
THE TRIBUNAL

(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(5) offer or use evidence that the lawyer knows to be false.

Misleading Legal Argument.

3. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but should recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(4), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Rule 3.30 Candor Toward the Tribunal

1. **In general**
   Disciplinary rule prohibiting an attorney from knowingly making a false statement of material fact to a tribunal applies whether or not the attorney is advocating for a client. Cohn v. Commission for Lawyer Discipline (App. 14 Dist. 1998) 979 S.W.2d 694, rehearing overruled.

2. **False statements**
   False statement of fact to tribunal is "material" within meaning of disciplinary rule if a judge would attach importance to the representation and would be induced to act on it in making a ruling, and thus, rule encompasses false statements by a lawyer that might corrupt the course of litigation even if they are not outcome determinative.

Cohn v. Commission for Lawyer Discipline (App. 14 Dist. 1998) 979 S.W.2d 694, rehearing overruled.

Evidence supported finding that attorney's misrepresentations to grievance committee were made knowingly; evidence showed that attorney knew what the true facts were when he made the statements. Weiss v. Commission for Lawyers Discipline (App. 4 Dist., 1998) 981 S.W.2d 8, rehearing overruled, review denied.

Disciplinary rule providing that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal bars an attorney from making false statements of fact or law to a tribunal when they are before the tribunal as a party, at least, in a case where his appearance as a party is due to his status as an attorney. Weiss v. Com-

BEFORE THE GRIEVANCE COMMITTEE FOR THE
STATE BAR
DISTRICT NO.07A, THE STATE BAR OF TEXAS

Complaint Against	)	CONFIDENTIAL
	)	
Clifford F. McMaster	)	No. F0010110991
	)	
Fort Worth, Texas	)	

COPY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A complaint was docketed by the Grievance Committee for State Bar District No.07A, State Bar of Texas, against Clifford F. McMaster, Texas Bar Number 13786000, (hereinafter called "Respondent") a licensed attorney and member of the State Bar of Texas, residing or maintaining an office in Fort Worth, Tarrant County, Texas, by Eugene P. Sholdra, as Complainant, alleging certain acts of professional misconduct on the part of the Respondent which occurred in Tarrant County, Texas. A Panel of the Committee has conducted a hearing on this complaint and having considered all of the evidence submitted, and by agreement of the Respondent lawyer, has on April 11, 2001 made the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT

1) Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.

2) The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable attorney fees and direct expenses associated with the proceedings of this matter, which should be paid by Respondent.

3) Respondent was retained on August 4, 1998 to represent Complainant in a person bankruptcy. Respondent filed the Chapter 7 bankruptcy petition on August 4, 1998. The original schedules filed were incorrect and were later amended. A creditor filed an adversary proceeding and filed a motion for Summary Judgment on April 30, 1999. As counsel or record, Respondent was served that motion. Although the local rules for the Northern District of Texas require a response be filed to a motion for Summary Judgment, Respondent did not file a response. Respondent failed to carry out the obligations owed to Complainant by failing to file a response to the motion for Summary Judgment that had been filed. The motion was granted and Complainant was denied a discharge.

II.

CONCLUSIONS OF LAW

The foregoing findings of fact support a violation of Rule(s) 1.01(b) (2) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules, effective January 1, 1990.

SIGNED this 9 day of May, 2001.

GRIEVANCE COMMITTEE
DISTRICT NO. 07A
STATE BAR OF TEXAS

BY: /s/
Juan Tijerina
Chairperson

CONSENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

In connection with the charges of professional misconduct filed against me and heard by your Committee, I hereby consent to entry of Findings of Fact and Conclusions of Law in the form submitted to me.

SIGNED this 4 day of April, 2001.

/s/
Clifford F. McMaster
State Bar No. 13786000